CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1946

No. 71

EDWARD KATZINGER COMPANY, PETITIONER,

vs.

CHICAGO METALLIC MFG. COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 26, 1946.

CERTIORARI GRANTED APRIL 29, 1946.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No.

EDWARD KATZINGER COMPANY,

Petitioner,

vs.

CHICAGO METALLIC MANUFACTURING COMPANY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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TRANSCRIPT OF RECORD

In the United States Circuit Court of Appeals For the Seventh Circuit

No. 8753

CHICAGO METALLIC MANUFACTURING COMPANY,

Plaintiff-Appellee,

vs.

EDWARD KATZINGER COMPANY,

Defendant-Appellant.

U. S. C. C. A. - 7
FILED
MAY 23 1945
KENNETH J. CARRICK
CLERK

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

THE DARTNELL-WARREN PRINTING COMPANY, 500 WEST JACKSON, CHICAGO

TRANSCRIPT OF RECORD FILED JAN. 19, 1945.
PRINTED RECORD.

In the
United States Circuit Court of Appeals
For the Seventh Circuit

No. 8753

CHICAGO METALLIC MANUFACTURING COMPANY,

Plaintiff-Appellee,

vs.

EDWARD KATZINGER COMPANY,

Defendant-Appellant.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

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1 Pleas had at a regular term of the District Court of the United States for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of September (it being the fourth day thereof) in the year of our Lord One Thousand Nine Hundred and Forty-Four and of the Independence of the United States of America the 169th year.

Present:

Hon. John P. Barnes, District Judge.
Hon. Philip L. Sullivan, District Judge.
Hon. Michael L. Igoe, District Judge.
Hon. William J. Campbell, District Judge.
Hon. Walter J. LaBuy, District Judge.
Hon. Elwyn R. Shaw, District Judge.
Hon. William H. Holly, District Judge.
Roy H. Johnson, Clerk.
William H. McDonnell, Marshal.

Wednesday, September 27, 1944.

Court met pursuant to adjournment.

Present: Honorable William J. Campbell, Trial Judge.

2 IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division.

Chicago Metallic Manufacturing Company, *Plaintiff,* vs. Edward Katzinger Company, *Defendant.*	Civil Action No. 2647.

Be It Remembered, that on, to wit, the 25th day of January, 1944, there was filed in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, a certain Mandate from the United States Circuit Court of Appeals for the Seventh Circuit, in words and figures following, to wit:

3 United States of America, } ss.

The President Of The United States of America To the Honorable the Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division Greeting:

Whereas, lately in the District Court of the United States for the Northern District of Illinois, Eastern Division, before you, or some of you, in a cause between Chicago Metallic Manufacturing Company, Plaintiff, and Edward Katzinger Company, Defendant, No. 2647, judgment was entered April 24, 1943 as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Seventh Circuit by virtue of an appeal by Chicago Metallic Manufacturing Company agreeably to the act of Congress, in such case made and provided, fully and at large appears.

4 And Whereas, in the term of October, in the year of our Lord one thousand nine hundred and forty-three,

the said cause came on to be heard before the said United States Circuit Court of Appeals for the Seventh Circuit, on the said transcript of record, and was argued by counsel

On Consideration Whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, reversed, with costs, and that this cause be, and it is hereby, remanded to the said District Court.

Friday, December 10, 1943.

And further that appellant, Chicago Metallic Manufacturing Company, recover against the appellee, Edward Katzinger Company the sum of four hundred and thirty/100 Dollars ($400.30) for costs herein expended with direction to award execution thereof.

You, therefore, are hereby commanded that such further proceedings be had in said cause, as according to right and justice, and the laws of the United States, ought to be had, the said judgment notwithstanding.

Witness, the Honorable Harlan F. Stone, Chief Justice of the United States, the twenty-fourth day of January, in the year of our Lord one thousand nine hundred and forty-four.

Kenneth J. Carrick,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

Endorsed: Filed Jan. 25, 1944. Roy H. Johnson, Clerk.

5 UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Taxed in favor of: .....

BILL OF COSTS.

In Cause No. 8320

Chicago Metallic Mfg. Co.,
Plaintiff-Appellant,
vs.
Edward Katzinger Company,
Defendant-Appellee.

	Cost of Each Item	
Docketing a case and filing the record.....	$ 5.00	5.00
Entering an appearance	.25	2.25
Transferring a case to the printed calendar	1.00	1.00
Entering a continuance	.25	____
Filing a motion, order, or other paper.....	.25	17.75
Entering any rule, or making or copying any record or any other paper, for each one hundred words	.20	____
Argument	.20	.20
Order	.20	.40
Entering a judgment or decree	1.00	1.00
Every search of the record of the court and certifying the same	1.00	____
Affixing a certificate and a seal to any paper	1.00	____
Receiving, keeping, and paying money, in pursuance of any statute or order of court, one per cent on the amount so received, kept, and paid	.....	____
Preparing the record for the printer, indexing the same, supervising the printing and distributing the copies, for each printed page of the record and index (provided that the charge for any single record and index shall not exceed five hundred dollars)	.15	____

Making a manuscript copy of the record, when required by the rules, for each one hundred words (but nothing in addition for supervising the printing)	.20	.....
Issuing a writ of error and accompanying papers, or a mandate or other process..	5.00	5.00
Filing briefs, for each party appearing....	5.00	15.00
Cost of printing record	.....	329.70
Cost of patent sheets for record.....	.....	.....
Copy of opinion of the Court.....	1.00	3.00
Attorney's docket fee	20.00	20.00

To be recovered by appellant from appellee—Total $400.30

7 And afterwards on, to wit, the 10th day of April, 1944 came the Parties by their attorneys and filed in the Clerk's office of said Court their certain Stipulation in words and figures following, to wit:

8 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—2647) * *

STIPULATION.

It Is Hereby Stipulated by and between the parties:

I.

That the dictionary definition of the word "ormolu" may be accepted by the court as follows:

"A preparation of ground gold for gilding; hence, bronze or other metal so gilded. A variety of brass made to imitate gold in appearance, used in mounts for furniture, etc. The effect is often heightened by lacquer or acids. Called also mosaic gold."

II.

Brass and bronze metal containers are not employed in direct contact with goods undergoing baking in the baking industry.

III.

The letter from Banning and Banning dated February 21, 1941 with the lists A, B, C1 and C2, attached hereto, may be accepted as part of the record in this case.

Banning & Banning,
Attorneys for Petitioner.

Chritton, Wiles, Davies & Hirschl,
Attorneys for Respondent.

April 5, 1944.

9

Banning and Banning
Counselors at Law
One North LaSalle Street
Chicago

February 21, 1941.

Messrs. Mayer, Meyer, Austrian & Platt,
231 South LaSalle Street,
Chicago, Illinois.

For Mr. J. X. Schwartz.

Re: Bakerex Pans of
Chicago Metallic Mfg. Co.

Gentlemen:

Mr. Schrager of Edward Katzinger has asked that we give you a statement of sales of pans made by Chicago Metallic Mfg. Co. under its license agreement of October 1, 1937. This statement, in two lists, A and B, is herewith enclosed, and has been prepared in response to Mr. Schrager's request. With respect to these lists the following explanation is offered:

List A is complete for Bakerex pans between January 1, 1938 and December 31, 1939 by which time the manufacture thereof had been discontinued. This list is identical with other statements which have been previously furnished to Katzinger.

List B, covering the year 1940, includes such additional Bakerex pans as were disposed of from time to time during that year. Since there is a small total of $897.52 on which royalties are due, we enclose herewith our check (certified) payable to Edward Katzinger Company for

$22.44 in full payment of the two and one-half per cent royalty which is due thereon.

Gratuitously, but without any necessity for so doing, we hand you also a third list C which has to do with the Bake-King pans of Chicago Metallic Mfg. Co. These Bake-King pans have superseded the former Bakerex pans on which royalties were due and have now been paid in full. This list C is given you to indicate to what extent and over what period of time the Bake-King pans have been sold, taking the place of the Bakerex pans now discontinued in their entirety. In thus acquainting you with the details of the Bake-King pan business, we desire merely that you be informed generally as to the situation which you are interested in knowing about, but deny that there is any liability to Katzinger on account of such Bake-King pans.

Yours very truly,
Banning and Banning,
By Ephraim Banning.

EB:AG
Enc.

10 BAKEREX PANS

Sold Jan. 1, 1938 to Dec. 31, 1939

Month	#38A Dozen	#38A Amount	#38 Dozen	#38 Amount	5% Frt. All. Qr.	5% Cash Disc. Qr.	Total Net Qr.	8½ Royalty Paid Qr.
Jan. '38	3434	$2,452.58	476½	$417.15				
Feb. "	1855	1,347.47	691	545.11				
Mar. "	3776	2,878.63	669	522.31	$ 403.45	$163.26	$7,596.54	$ 27
Apr. "	1996	1,690.91	187	145.51				
May "	1683	1,124.44	225	167.37				
June "	831	595.17	141	100.74	190.77	76.48	3,556.89	17
July "	2609	1,872.50	226	185.76				
Aug. "	2522	1,804.01	142	111.98				
Sept. "	2304	1,660.20	100	80.07	285.70	114.28	5,314.54	26
Oct. "	3292½	2,489.92	138½	106.37				
Nov. "	3466	2,666.19	199	161.46				
Dec. "	1847	1,399.48	17	10.14	325.68	136.71	6,371.17	31
Jan. '39	2508½	1,717.39	281	222.80				
Feb. "	4008	2,919.09	191	148.60				
Mar. "	4420	3,307.70	133	112.57	421.41	168.56	7,838.18	39
Apr. "	3301	2,301.92	183	130.74				
May "	1805	1,219.36	56½	46.62				
June "	900	652.82	81	62.75	220.70	88.28	4,105.20	20
July "	3132	2,045.39	20½	20.19				
Aug. "	2651	1,887.04	130½	107.21				
Sept. "	312	187.35	149	135.20	219.01	87.64	4,075.73	21
Oct. "	1402½	685.95	56½	45.89				
Nov. "	112	69.93	13	10.11				
Dec. "	316	178.75	39	11.65	50.11	20.05	932.12	4
	54483½	39,154.29	4546	3,608.27	2,116.83	855.26	39,790.37	1,99
Less refund for last quarter of 2½%								2
								1,98

BAKEREX SALES 1-1-40 TO 1-1-41 List B

Bakerex Item	On Hand 1-1-40 Dozens	On Hand 1-1-41 Dozens	Sold in 1940 Dozens	Price per Dozen	Total
72	39		39	.60	$23.40
150	170	170			
130	140	132	8	.60	4.80
160	55	49	6	.78	4.68
245	90	65	25	.90	22.50
74	20	13	7	1.00	7.00
77	10		10	1.44	14.40
73	278		278	.76	211.28
110	180	48	132	.40	52.80
140	125	80	45	.78	35.10
2110	15	12	3	.40	1.20
2109	606	328	278	.36	100.08
1409-R	196	196			
1109-K	42		42	.40	16.80
2109-K	32	24	8	.56	4.48
1110-K	30	19	11	.54	5.94
1110	765	761	4	.34	1.36
2009-K	26		26	.54	14.04
1109	755	747	8	.29	2.32
2010-K	100	84	16	.78	9.28
218	3	3			
5008-T	62	49	13	.78	10.14
222	54	54			
206-S	94	50	44	.78	34.32
5008	484	481	3	.78	2.34
206-D	225	163	62	.78	48.36
212-S	57	37	20	1.50	30.00
408	10	10			
208-D	114	114			
212-D	29	29			
216	1		1	.78	.78
33	45	12	33	.78	25.74
103	36	36			
44	164	109	55	.78	42.90
22	350		350	.68	238.00
2010	108	108			
2009	5	5			
					964.04
				5% Freight	48.20
					915.84
				2% For Cash	18.32
					897.52

12 List C
(Sheet 1)

BAKE-KING SALES—July 1, 1939 to Jan. 1, 1941

Item	Dozens	Price Per Dozen	Total
11	5,127	$ .65	$ 3,332.50
22	11,054	.68	7,516.72
33	5,444	.78	4,246.32
44	5,871	.78	4,579.38
101	540	.65	351.00
102	762	.68	518.16
103	727	.78	567.06
110	2,907	.40	1,162.80
120	10,495	.60	6,297.00
130	4,527	.60	2,716.20
140	4,061	.78	3,167.58
150	411	.75	308.25
160	1,466	.78	1,143.48
225	2,708	.78	2,112.24
245	3,149	.90	2,834.10
72	3,879	.60	2,327.40
73	5,954	.76	4,525.04
74	9,408	1.00	9,408.00
77	8,844	1.44	12,735.36
77-T	88	1.44	126.72
78	28	.75	21.00
79	7	.60	4.20
100	17	.90	15.30
200	4	1.14	4.56
300	47	1.80	84.60
303	35	1.50	52.50
305	22	2.40	52.80
206-S	2,834	.78	2,210.52
208-S	2,196	1.04	2,283.84
212-S	1,144	1.50	1,716.00
206-D	2,075	.78	1,618.50
208-D	1,177	1.04	1,224.08
212-D	1,584	1.50	2,076.00
216	963	.78	751.14
218	446	1.04	463.84
222	430	1.50	645.00
406	3,749	.78	2,924.22
408	640	1.04	665.60
412	740	1.50	1,110.00
5006	95	.60	57.00
5008	2,767	.78	2,158.26
5008-T	437	.78	340.86
509	2,848	.38	1,082.24
1109-K	2,215	.40	886.00
1110-K	2,786	.54	1,504.44

13 List C

(Sheet 2)

BAKE-KING SALES—July 1, 1939 to Jan. 1, 1941

Item	Dozens	Price Per Dozen	Total
2008	12	$ .32	$ 3.84
2009	3,591	.34	1,220.94
2010	3,742	.38	1,421.96
2109	3,250	.36	1,170.00
2110	1,387	.40	554.80
2009-K	5,020	.54	271.08
2109-K	3,122	.56	1,748.32
2110-K	3,643	.60	2,185.80
1106	7,370	.17	1,252.90
2010-K	1,684	.58	976.72
1105	4,269	.16	683.04
1109	8,445	.29	2,449.05
1110	8,893	.34	3,023.62
	171,244		$ 110,889.88

14 And afterwards on, to wit, the 28th day of July, 1944 there was filed in the Clerk's office of said Court a certain Supplemental Memorandum—Finding and Conclusion of the Honorable William J. Campbell, District Judge in words and figures following, to wit:

15 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—2647) * *

SUPPLEMENTAL MEMORANDUM—FINDING AND CONCLUSION.

Campbell, District Judge.

The question of estoppel as between the parties to this suit as heretofore decided by this Court having been removed by the decision of the Circuit Court of Appeals and the respondent having elected no longer to rely upon Design Patent No. 108,573, the only question now before this Court is the validity of Jackson Patent No. 2,077,757 when tested without the estoppel.

Considering the Jackson Patent on its merits and after a complete review of the prior art cited by the petitioner, I am of the opinion that Jackson Patent No. 2,077,757 is invalid as being fully disclosed in the prior art.

An appropriate decree so holding may be prepared by counsel for petitioner and submitted to the Court within twenty days from date hereof delivering copies thereof to counsel for respondent. Within twenty days of the receipt of such copies counsel for the respondent may prepare and file with the Court, in writing, his observations with reference thereto and suggestions for the modification thereof, delivering a copy of such observations and suggestions to counsel for the petitioner. Within ten days thereafter counsel for the petitioner may present to the Court, in writing, his reply to such observations and suggestions. Whereupon the matter of entering a decree herein will be taken by the Court without further argument.

Campbell,
Judge.

July 28, 1944.

16 And afterwards on, to wit, the 30th day of August, 1944 there was submitted in the Clerk's office of said Court a certain Findings of Fact and Conclusions of Law in words and figures following, to wit:

17 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—2647) * *

FINDINGS OF FACT.

The findings of Fact heretofore entered are modified by cancelling Finding No. 17, and substituting therefor the following new Finding 17.

17. Jackson patent No. 2,077,757 is invalid over the prior art.

18 ## CONCLUSIONS OF LAW.

1. The Court has jurisdiction of the parties and of the subject matter of this suit.

2. The Petitioner has infringed patent No. 2,077,757 by making and selling its Bake-King tinware.

3. Said patent No. 2,077,757 is invalid over the prior art.

Enter

.....

Judge.

19 And on the same day, to wit, the 30th day of August, 1944 there was submitted filed in the Clerk's office of said Court a certain Final Decree in words and figures following, to wit:

20 IN THE UNITED STATES DISTRICT COURT.

* * (Caption 2647) * *

FINAL DECREE.

This cause having come on to be heard on the pleadings and proof and having been argued by counsel and duly considered by the Court, it is hereby decreed as follows:

1. That the Jackson patent No. 2,077,757 is invalid as to all of its claims.

2. Petitioner's Bake-King structure infringes said patent.

3. Defendant is entitled to an accounting during the period of its license for royalties under its license contract with Petitioner for articles made under the licensed patents, prior to the termination of the license on April 21, 1941, and this case is referred to Master ..... for the purpose of taking such an accounting.

.....

....., 1944.

21 And on the same day, to wit, the 30th day of August, 1944 there was submitted in the Clerk's office of said Court a certain Final Decree in words and figures following, to wit:

22 IN THE UNITED STATES DISTRICT COURT.

* * (Caption 2647) * *

FINAL DECREE.

This cause having come on to be heard on the pleadings and proof and having been argued by counsel and duly considered by the Court, it is hereby decreed as follows:

That Petitioner and Respondent are in Court without equity, and the petition and counterclaim are therefore dismissed as being without equity and without costs to either party.

.....

Judge.

....., 1944.

23 And afterwards, to wit, on the 27th day of September, 1944, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William J. Campbell, District Judge, appears the following entry, to wit:

24 IN THE UNITED STATES DISTRICT COURT.

* * (Caption 2647) * *

FINDINGS OF FACT.

(1) The Edward Katzinger Company, Defendant, is a corporation organized and existing under the laws of the State of Illinois. The Plaintiff, Chicago Metallic Manufacturing Company, is a corporation organized and existing under the laws of the State of Illinois.

(2) The defendant owns full title in and to the following Letters Patent of the United States To Wit:

Patent	Date	Inventor
#2,077,757	April 20, 1937	Joseph G. Jackson
#D-108,140	January 25, 1938	Joseph G. Jackson
#D-108,141	January 25, 1938	Joseph G. Jackson
#D-108,573	February 22, 1938	Joseph G. Jackson

all relating to the embossure of baking pans.

(3) In each of the patents above listed, the embossure disclosed was applied in conformity to a regular recurrent geometric pattern and the claims of the respective patents were directed to tinware having a pattern of embossure in which regularity in the application of the embossed
25 pattern constituted the characteristic feature.

(4) Prior to April 22, 1937 the plaintiff was marketing a brand of tinware under the name of Bakerex having thereon an embossed pattern displaying regularity in the embossure, and on that date the defendant sent written notice to the plaintiff charging infringement in the manufacture and sale of such tinware. Thereafter, the parties entered into a license agreement dated October 31, 1937, modified as to the royalty rate on October 20, 1939, which agreement was lawfully terminated by plaintiff's notice in writing dated February 20, 1941 which termination became effective on April 20, 1941.

(5) Prior to the giving of such notice of termination, the plaintiff had ceased the manufacture and sale of the Bakerex type of tinware and had introduced to the trade a different type of tinware under the name—Bake-King—in which the embossure is irregular and not in conformity with any geometric pattern, which Bake-King tinware is the type whereof infringement is charged under the defendant's counter-claim.

(6) Prior to the filing of the petition for a declaratory decree, the defendant had demanded payment of royalties under the four patents previously listed on account of the manufacture and sale by plaintiff of its Bake-King tinware which royalties had been refused by the plaintiff, so that an actual controversy existed between the parties in
26 respect to all of the patents mentioned, and the answer filed by the defendant included a counter-claim charging infringement of all of such patents. But the defendant later confined its charges of infringement to mechanical patent #2,077,757 and design patent #D-108,573, and prior to the entry of the order of April 1, 1944, withdrew the charge of infringement under #D-108,573.

Campbell,
Sept. 27, 1944. *U.S.D.J.*

27 CONCLUSIONS OF LAW.

(1) The Jackson patent #2,077,757 is invalid and of no force or effect.

(2) The defendant's charges of infringement under design patent #D-108,573 were withdrawn, and the charges of infringement under #D-108,140 and #D-108,141 were abandoned, after issue respecting the validity and infringement of each of said design patents had been joined and the case was ready for trial, and the defendant is therefore estopped from hereafter asserting claim under said patents or any of them against plaintiff on account of the manufacture and sale of Bake-King tinware or any tinware displaying irregular embossing of the general character of said Bake-King tinware.

(3) The defendant, in correspondence prior to the filing of the petition for declaratory judgment, having asserted infringement of its design patents aforesaid as well as mechanical patent #2,077,757, and having reiterated said charges in its counter-claim, the plaintiff was justified in

including in its petition a prayer for the adjudication of questions of validity and infringement of said design patents and each of them.

(4) Plaintiff is entitled to costs.

(5) Plaintiff is entitled to a decree in accordance with the above conclusions.

Campbell,
Sept. 27, 1944. *U.S.D.J.*

28 And on the same day, to wit, on the 27th day of September, 1944, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William J. Campbell, District Judge, appears the following entry, to wit:

29 IN THE UNITED STATES DISTRICT COURT.

* * (Caption 2643) * *

FINAL DECREE.

This cause coming on for trial and the parties having been represented by counsel and testimony having been adduced and duly considered and the court being fully advised in the premises, it is hereby decreed as follows:

(1) The decree of April 24, 1943, together with the Findings of Fact and Conclusions of Law entered as of that date, are hereby vacated, and the injunction is dissolved.

(2) Title to each of the following Letters Patent of the United States is in the defendant, Edward Katzinger Company, viz.

Jackson patent # 2,077,757, issued April 20, 1937
Jackson patent #D-108,753, issued February 22, 1938
Jackson patent #D-108,140, issued January 25, 1938
Jackson patent #D-108,141, issued January 25, 1938

(3) Patent #2,077,757 is invalid and of no force or effect.

(4) Defendant's charges of infringement of patent #2,077,757 under its counter-claim directed against Plaintiff's Bake-King tinware, are hereby dismissed for want of equity.

(5) The defendant's charges of infringement under the design patent #D-108,573 having been withdrawn after issue joined, and the charges of infringement under #D-108,140 and #D-108,141 having been abandoned after issue joined, and all of said charges, together with the charges under patent #2,077,757, being directed to the same transactions, all charges of infringement of said design patents are hereby dismissed with prejudice, and the defendant and its officers and agents are perpetually enjoined from making further threats of infringement against the plaintiff or any of its customers, or of asserting any rights or prosecuting any accounting under patent #2,077,757 or any of said design patents or other patents, if any, which might properly have been the subject of counter-claim, by reason of the manufacture and sale in the past or future of plaintiff's Bake-King tinware, or any embossed tinware of the same general character.

(6) It is further decreed that plaintiff recover from the defendant all costs including costs in the amount of $513.19 heretofore included in the two mandates in the Court of Appeals.

Campbell,
Judge.

Sep. 27, 1944.

31 And afterwards on, to wit, the 21st day of December, 1944 came the Respondent by his attorneys and filed in the Clerk's office of said Court his certain Notice of Appeal in words and figures following, to wit:

32 IN THE UNITED STATES DISTRICT COURT,

NORTHERN DISTRICT OF ILLINOIS,

EASTERN DIVISION.

Chicago Metallic Manufacturing Company,
Petitioner-Appellee,
vs.
Edward Katzinger Company,
Respondent-Appellant.
} Civil Action No. 2647.

NOTICE OF APPEAL.

Notice is hereby given that Edward Katzinger Company, respondent-appellant, now appeals to the United States Circuit Court of Appeals for the Seventh Circuit from the final decree entered on September 27, 1944, as to all points covered by said decree and in favor of the petitioner-appellee.

Chritton, Wiles, Davies & Hirschl,
Attorneys for Respondent-Appellant.

Charles J. Merriam,
Of Counsel.

(Attached hereto is the following certificate):

33 IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION.

CERTIFICATE OF MAILING.

I, Roy H. Johnson, Clerk of the United States District Court, for the Northern District of Illinois, Eastern Division, keeper of the Seal and Records of said Court, do hereby certify that on the 22nd day of December, 1944, in accordance with Rule 73 (b) of the Rules of Civil Procedure for District Courts of the United States, I did cause to be mailed a copy of the foregoing Notice of Appeal to the following attorneys of record:

Messrs. Banning & Banning
1 North La Salle Street
Chicago 2, Illinois

Roy H. Johnson,
(Seal) *Clerk.*

34 And on the same day, to-wit, the 16th day of January, 1945 came the Respondent-Appellant by his attorneys and filed in the Clerk's office of said Court his certain Statement of Points On Appeal in words and figures following, to-wit:

35 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—2647) * *

STATEMENT OF POINTS ON APPEAL.

The following errors are assigned by Edward Katzinger Company, Respondent as a Statement of Points on which it intends to rely on said Appeal:

(1) The Court erred in holding Jackson Patent No. 2,077,757 invalid.

(2) The Court erred in perpetually enjoining Respondent from proceeding with the accounting suit pending in the State Court.

(3) The Court erred in assessing all costs against Respondent including the cost in the Mandates of the Circuit Court of Appeals.

(4) The Court erred in holding that in view of the art; No invention was involved in the subject matter of the Jackson Patent No. 2,077,757.

(5) The Court erred in not ordering an accounting during the period of the license for royalties under said license, for articles made under the licensed patents prior to the termination of the license on April 21, 1941.

36 (6) The Court erred in entering findings of fact and conclusions of law submitted by Petitioner.

(7) The Court erred in not entering findings of fact and conclusions of law submitted by Respondent.

(8) The Court erred in granting any relief to Petitioner in view of the unclean hands of Petitioner.

Chritton, Wiles, Davies & Hirschl,
Attorneys for Respondent-Appellant.

Service of the above Statement of Points acknowledged this 26 day of December, 1944.

Banning & Banning,
Attorneys for Petitioner-Appellee.

37 And on the same day, to-wit, the 21st day of December, 1944, there was filed in the Clerk's office of said Court a certain Appeal Bond in words and figures following, to-wit:

38 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—2647) * *

#870514K APPEAL BOND.

Know All Men By These Presents: That Edward Katzinger Company, an Illinois corporation, of Chicago, Illinois, as principal, and American Surety Company of New York, as surety, are held and firmly bound unto Chicago Metallic Manufacturing Company, an Illinois corporation, of Chicago, Illinois, in the full and just sum of Two Hundred and Fifty Dollars ($250.00), to be paid to the said Chicago Metallic Manufacturing Company, its successors or assigns, to which payment well and truly to

be made, we bind ourselves, assigns, and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 12th day of December, A. D. 1944.

Whereas, lately, at a session of the District Court of the United States for the Northern District of Illinois, Eastern Division, in a suit pending in said Court between the petitioner, Chicago Metallic Manufacturing Company, and the respondent, Edward Katzinger Company, a final decree was entered against the said respondent, including an injunction and its counterclaim dismissed with prejudice, and the respondent, Edward Katzinger Company, is herewith filing its Notice of Appeal to the United States Circuit Court of Appeals for the Seventh Circuit:

39 Now, the condition of this obligation is such, that if the said respondent, Edward Katzinger Company, shall prosecute its said appeal to effect and shall answer all costs that may be awarded if it fails to make its appeal good, then this obligation to be void; otherwise to remain in full force and effect.

Edward Katzinger Company,
By Chritton, Wiles, Davies & Hirschl,
Its Attorneys.

(Seal)

American Surety Company of New York,
By B. H. Davenport,
Res. Vice-Pres.,

Attest: G. Hoffman,
Res. Asst. Secy.

40 And afterwards on, to-wit, the 16th day of January, 1945 came the Parties by their attorneys and filed in the Clerk's office of said Court their certain Stipulation in words and figures following, to-wit:

41 IN THE UNITED STATES DISTRICT COURT.

(Caption—2647)

STIPULATION.

It Is Hereby Stipulated By And Between The Parties:

I.

That the complete printed Record on Appeal in the above cause, in the United States Circuit Court of Appeals for the 7th circuit in case No. 8320 be made a part of the Record on Appeal, in this matter.

II.

That on February 11, 1944, counsel for both parties being in attendance before Judge Campbell, on a Motion by Petitioner to reinstate cause for proceedings in conformity with the Mandate of the Circuit Court of Appeals dated January 24, 1944 and to amend paragraph 11 of the Complaint to include after the patents therein listed, the following—No. 319, 306 June 2, 1885, Palmer—at Petitioner's Exhibit 12; that no stenographic minutes were taken of the proceedings on said Motion, but that the Court orally allowed said Motion.

Banning & Banning,
Attorneys for Petitioner.
Chritton, Wiles, Davies & Hirschl,
Attorneys for Respondent.

42 And on the same day, to-wit, on the 16th day of January, 1945, being one of the days of the regular December, 1944 term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William J. Campbell District Judge, appears the following entry to-wit:

43 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—2647) * *

ORDER.

On Motion of Respondent, and both parties consenting thereto;

It Is Hereby Ordered that the Clerk of the District Court in the certification of the Record to the Court of Appeals may certify a copy of the printed transcript of Record in the United States Circuit Court of Appeals for the 7th Circuit in case No. 8320 as part of the Record in the District Court proceedings subsequent to the Mandate of January 24, 1944 of said Court of Appeals.

Enter Campbell,
Judge.

Jan. 16, 1945.
O. K.

Banning & Banning,
Attorneys for Petitioner,
Chritton, Wiles, Davies & Hirschl,
Attys for Respondent.

44 And afterwards, to-wit, on the 17th day of January, 1945, being one of the days of the regular December, 1944 term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William J. Campbell District Judge, appears the following entry, to-wit:

45 IN THE UNITED STATES DISTRICT COURT.
(Caption—2647)

ORDER.

This matter coming on to be heard on motion of Respondent and it appearing to the Court that Respondent submitted to the Court, on August 30, 1944, for filing herein proposed Findings of Fact and Conclusions of Law and alternative final decrees,

It Is Therefor Ordered that said proposed Findings of Fact and Conclusions of Law and alternative final decrees submitted by Respondent to the Court on August 30, 1944 be marked "submitted" as of that date and that the same may be included in the Record on Appeal.

Enter:

Campbell,
Judge.

Jan. 17. 1945.

46 And on, to-wit, the 16th day of January, 1945, came the Parties by their attorneys and filed in the Clerk's office of said Court their certain Stipulation As To Designation Of Contents Of Record On Appeal in words and figures following, to-wit:

47 IN THE UNITED STATES DISTRICT COURT.
(Caption—2647)

STIPULATION OF PARTIES AS TO DESIGNATION OF CONTENTS OF RECORD ON APPEAL.

It is stipulated between the parties by their respective counsel that the Contents of Record on Appeal, in this matter shall include:

1. Stipulation of the parties filed January 16, 1945 and Memorandum Order entered thereon.
2. The complete printed Record on Appeal in the above cause, in the United States Circuit Court of Appeals for the 7th Circuit in Case No. 8320.

3. The Mandate of the United States Circuit Court of Appeals for the 7th Circuit in Case No. 8320.
4. Agreed Order entered January 16, 1945.
5. Stipulation filed April 10, 1944 together with letter attached thereto from Banning and Banning, dated February 21, 1941, with lists A, B, C1 and C2 attached thereto.
48 6. Supplemental Memordanum—findings and conclusions entered July 28, 1944.
7. Respondent's proposed findings of fact and conclusions of law and final decree submitted by Respondent and filed August 30, 1944.
8. Final decree entered September 27, 1944.
9. Findings of fact and conclusions of law.
10. Notice of Appeal.
11. Appeal Bond.
12. This Stipulation as to Designation of Contents of Record on Appeal.
13. Respondent's Statement of Points on Appeal.

Chritton, Wiles, Davies & Hirschl,
Attorneys for Respondent-Appellant,
Banning & Banning,
Attorneys for Petitioner-Appellee.

49 Northern District of Illinois } ss:
Eastern Division }

I, Roy H. Johnson, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Stipulation filed in this Court in the cause entitled: *Chicago Metallic Manufacturing Company, Petitioner,* v. *Edward Katzinger Company, Respondent,* Civil Action No. 2647, as the same appear from the original records and files thereof now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 18th day of January, A. D. 1945.

Roy H. Johnson,
Clerk.

(Seal)

50 IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Caption—8753) * *

STIPULATION.

It is hereby stipulated by and between the parties hereto by their respective counsel that the printed Record on Appeal in the above cause in this court in case No. 8320, embodied in the Transcript on Appeal in the current Appeal, be not printed but that copies of the former Record, in case No. 8320, may be made available to the court in the current Appeal on the hearing.

Banning & Banning,
Attorneys for Petitioner-Appellee,

Chritton, Wiles, Davies & Hirschl,
Attorneys for Respondent-Appellant.

Approved:
Sherman Minton,
Circuit Judge.

Feb. 22, 1945.

51 IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Caption—8753) * *

STIPULATION.

(Filed Feb. 15, 1945, Kenneth J. Carrick, Clerk.)

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the printed transcript of record, printed under my supervision and filed on the twenty-third day of May, 1945, in:

Cause No. 8753.

Chicago Metallic Manufacturing Company,
Plaintiff-Appellee,

vs.

Edward Katzinger Company,
Defendant-Appellant,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 19th day of March, A. D. 1946.

(Seal)

(Signed) Kenneth J. Carrick,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, held in the City of Chicago, and begun on the third day of October, in the year of our Lord one thousand nine hundred and forty-four and of our Independence, the one hundred and sixty-ninth.

Chicago Metallic Manufacturing Company, *Plaintiff-Appellee,* vs. Edward Katzinger Company, *Defendant-Appellant.*	Appeal from the District Court of the United States for the Northern District of Illinois Eastern Division.

8753

And, to wit: On the twenty-second day of February, 1945, the following further proceedings were had and entered of record, to-wit:

Thursday, February 22, 1945.

Court met pursuant to adjournment.

Before:

Hon. Shermin Minton, Circuit Judge.

Chicago Metallic Manufacturing Company, *Plaintiff-Appellee,* vs. Edward Katzinger Company, *Defendant-Appellant.*	Appeal from the District Court of the United States for the Northern District of Illinois Eastern Division.

8753

Pursuant to stipulation of counsel, it is ordered that the printed record in appeal No. 8320 embodied in the certified transcript of record be not printed in the printed record but that copies thereof be made available to the Court in the current appeal on the hearing.

And afterwards, to-wit: On the sixteenth day of November, 1945, the following further proceedings were had and entered of record, to-wit:

Friday, November 16, 1945.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.
Hon. Robert C. Baltzell, District Judge.

Chicago Metallic Manufacturing Company, *Plaintiff-Appellee,*	}	Appeal from the District Court of the United States for the Northern District of Illinois Eastern Division.
8753 *vs.*		
Edward Katzinger Company, *Defendant-Appellant.*		

Now this day come the parties by their counsel, and this cause comes on to be heard on the transcript of the record and the briefs of counsel, and on oral argument by Mr. Charles J. Merriam, counsel for appellant and Max W. Zabel, counsel for appellee, and the Court takes this matter under advisement.

And afterwards, to-wit: On the twenty-second day of January, 1946, there was filed in the office of the Clerk of this Court, the Opinion of the Court, which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

No. 8753. OCTOBER TERM, 1945, JANUARY SESSION, 1946.

Chicago Metallic Manufacturing Company, *Plaintiff-Appellee,* *vs.* Edward Katzinger Company, *Defendant-Appellant.*	Appeal from the District Court of the United States for the Northern District of Illinois Eastern Division.

January 22, 1946.

Before SPARKS and KERNER, *Circuit Judges*, and BALTZELL, *District Judge.*

BALTZELL, *District Judge.* This appeal challenges the correctness of the decree of the district court in which the Jackson patent in suit, No. 2,077,757, was found to be invalid. The application was filed in the Patent Office on August 17, 1936, and the patent issued on April 20, 1937. The case has twice before been on appeal to this court. See 123 F. 2d 518; 139 F. 2d 291.

An action was begun in the district court by plaintiff-appellee, hereinafter referred to as appellee, in which it sought a declaratory judgment as to the validity and infringement of the aforementioned patent, together with other patents. Only this patent, however, is involved in this appeal. The defendant-appellant, hereinafter referred to as the appellant, filed in the district court a counterclaim in which it contended that the patent in suit was valid and infringed. It sought an injunction and an accounting. The patent was issued to Joseph G. Jackson, afterwards assigned to appellant and now owned by it.

Both appellee and appellant have long been engaged in the manufacture and sale of tin ware, especially baking

pans which are used by housewives, the surface of such pans being sometimes smooth. In January of 1936 appellant began the manufacture and sale of a line of baking pans designated as "Ovenex". Shortly thereafter, appellee introduced a new line of baking pans similar to those made by appellant and designated them as "Bakerex". Appellee was notified by appellant that it considered such merchandise as infringing its patent. On October 1, 1937, the parties entered into a license agreement whereby appellee was given the right to manufacture and sell such merchandise under its trade name of "Bakerex" and to pay a certain royalty to appellant under the license. Payment continued until some time in May or June of 1938 when appellee discontinued the manufacture and sale of "Bakerex" and introduced another line known as "Bake-King", the construction of which it contended differed from both "Ovenex" and "Bakerex" and was not included in the license agreement. It refused to make further payments under the license. This action was afterwards filed in the district court on February 21, 1941.

A decree was entered by the district court on April 24, 1943 in which it was held that the patent in suit, known as the Jackson patent, was valid as between appellee and appellant and infringed, and an accounting was ordered. The holding of validity was as between the parties only, and was based solely upon the ground of estoppel because of the license agreement heretofore referred to. An appeal was taken from this decree, and this court held on authority of the case of *Sola Electric Company* v. *Jefferson Electric Company*, 317 U. S. 173, 63 S. Ct. 172, 87 L. Ed. 165, that estoppel did not apply, owing to the fact that the license agreement contained a provision for price fixing, and the cause was remanded to the district court. *Chicago Metallic Manufacturing Company* v. *Edw. Katzinger Company*, 139 F. (2d) 291 (C. C. A. 7). Thereafter, on September 27, 1944, the district court entered a final decree wherein it held that the Jackson patent in suit was invalid and dismissed the counterclaim, which charged infringement, for want of equity. The question to be determined, therefore, is whether or not the Jackson patent, No. 2,077,757, is valid.

Baking pans are old in the art, and it is not otherwise contended by the parties. But, appellant asserts that

pans built in accordance with the patent in suit present a "pleasing and appealing appearance, will not be easily scarred or marked and will have increased strength and resistance to denting and warping * * *." Granting that this and other advantages set forth in the specifications of the patent are true, does the claimed structure rise to the dignity of invention? We think not. It may have required mechanical skill to design the article, but it is well known that "patentable novelty or invention calls for something more than the skill of the mechanic". *Chicago Steel Foundry Company* v. *Burnside Steel Foundry Company*, 132 F. (2d) 812 (C. C. A. 7).

It is stated by Jackson in his specifications that: "This invention relates to baking pans and the material from which they are made, whereby the pan will present a pleasing and appealing appearance, will not be easily scarred or marked, and will have increased strength and resistance to denting and warping. It also contemplates a pan wherein the grease, if any, used in baking will be evenly distributed over the inner surfaces of the pan and the pan surfaces in direct contact with the dough therein will be increased to improve the bake". The specifications also provide that: "Heretofore, in the manufacture of baking pans the material or metal used has generally had a plain, smooth, uninterrupted and generally a polished surface with the result that every defect in the material, all dents placed therein from one cause or another and all finger prints, smudges, and the like appeared thereon and often were emphasized. Therefore, the smooth, plain, polished surface of the pan walls in addition to being easily marred and dented, did not present a particularly attractive appearance on display, especially after the article has been frequently handled." Further, the inventor states, in substance, that the smooth, flat material warps easily and provides no means for an even distribution of the grease. The patent in suit does not change the shape of the pan or provide a new use for the same. It simply provides for a pan with alternate depressions and elevations on the surface which will remove all stress, strains and buckles, will conceal any defects and fingerprints, and will prevent warpage. It may also provide for an increased heating surface and a more uniform distribution of grease, because of the depressions and elevations. The

depressions and elevations may be rolled, pressed or otherwise made either before, during, or after the formation of the pan.

The claims of the patent may be summarized as follows: A sheet metal baking pan having a bottom stamped into alternate elevations and depressions aligned in at least two directions; a sheet metal baking pan having a plurality of relatively small, shallow depressions formed therein arranged in rows in at least two directions, said rows being separated one from the other by continuous, relatively low and narrow elevations; a sheet metal baking pan having a series of shallow, relatively small depressions formed in the bottom thereof and aligned in rows in at least two directions, said rows being separated one from the other by relatively low and narrow elevations, part of which are continuous and part interrupted by other elevations; a sheet metal baking pan having the material thereof stamped into alternate elevations and depressions aligned in at least two directions; a sheet metal baking pan having a series of alternately arranged relatively shallow depressions and elevations aligned in at least two directions; and a metal baking pan having a plurality of separated relatively shallow, small depressions in the bottoms and walls thereof. Under these claims it is apparent that it was intended that elevations and depressions should be separated by continuous, relatively low and narrow elevations and aligned in two directions. At least one of the purposes of the separation and alignment of the depressions and elevations was presumably to improve the appearance and to prevent the grease from passing from one depression to another in the oven or other support of the pan when in use if such oven or other support was uneven, and to more evenly distribute the grease. It will be observed that, considering the scope of the claims, this arrangement may be in the walls of the pan, as well as in the bottom. It is believed that the above description will suffice to advise one of the character and scope of the patent in suit.

Appellee has cted several patents and publications showing the state of the art prior to the asserted invention of the patent in suit. Long prior thereto baking pans were constructed of sheet metal, and both the bottoms and the sides were corrugated or embossed by elevations and de-

pressions. True, such elevations and depressions were not always entirely separated, and some were not aligned geometrically in two directions, as provided in the patent, but they were so constructed as to clearly suggest the subjectmatter of the Jackson patent. Patent No. 319,306 is entitled "Process of Making Sheet Metal Ware", the patent having issued to H. L. Palmer on June 2, 1885. This patent did not relate to pans used for baking, but did relate to the surface ornamentation of trays, waiters, plaques, card receivers, clock frames, etc. The finished product, however, contained elevations and depressions aligned in two directions.

The patent to Ball, No. 495,872, granted in 1893, discloses and claims a "bake pan provided with a series of independent pocket-forming elevations in its bottom".

Appellant admits in its brief, at page 12, that: "The American Nickeloid exhibit consists of sheet metal available on the market prior to Katzinger and embossed in a manner which might infringe the claims if the American Nickeloid sheets were made up into baking pans". It contends, however, that: "There was no suggestion in the art that the sheet metal be used for such purpose and the discovery that a baking pan could be made of sheet metal of this type is highly inventive". As heretofore observed, baking pans were old in the art, and there was no formula as to either the type or the kind of material from which they must be made. There was nothing to prevent a person of ordinary mechanical skill from using such sheets in the making of baking pans. Certainly, it would not require inventive genius to thus shape these sheets. The fact that the metal may have been designed for ornamental purposes would not deprive a person from using it for other purposes, such as baking pans.

Since we have arrived at the conclusion that the patent is invalid for lack of invention, no good purpose would be served in further discussion of the prior art.

The decree of the district court is AFFIRMED.

Endorsed: Filed January 22, 1946. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the twenty-second day of January, 1946, the following further proceedings were had and entered of record, to-wit:

Tuesday, January, 22, 1946.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.
Hon. Robert C. Baltzell, District Judge.

Chicago Metallic Manufacturing Company, *Plaintiff-Appellee,*	}	Appeal from the District Court of the United States for the Northern District of Illinois Eastern Division.
8753 *vs.*		
Edward Katzinger Company, *Defendant-Appellant.*		

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered, adjudged and decreed by this Court that the decree of the said District Court in this cause appealed from be, and the same is hereby, affirmed, with costs.

And afterwards, to-wit: On the nineteenth day of February, 1946, the following further proceedings were had and entered of record, to-wit:

Tuesday, February 19, 1946.

Court met pursuant to adjournment.

Before:

Hon. Otto Kerner, Circuit Judge.

Chicago Metallic Manufacturing Company, *Plaintiff-Appellee,* vs. Edward Katzinger Company, *Defendant-Appellant.*	Appeal from the District Court of the United States for the Northern District of Illinois Eastern Division.

5753

On motion of counsel for appellant, it is ordered that the issuance of the mandate of this Court in this cause be, and the same is hereby, stayed for a period of ninety days from January 22, 1946, pending application for Writ of Certiorari in the Supreme Court of the United States.

And afterwards, to-wit: On the second day of March, 1946, there was filed in the office of the Clerk of this Court, a designation of record, which said designation is in the words and figures following, to-wit:

IN THE U. S. CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

Chicago Metallic Manufacturing Company,
Plaintiff-Appellee,
vs.
Edward Katzinger Company,
Defendant-Appellant.
No. 8753.

8753

DESIGNATION FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above Court:

You are hereby requested to make a transcript of record to be filed in The Supreme Court of the United States pursuant to a Petition for a Writ of Certiorari to be filed in the above entitled cause, and to include in such transcript of record the following, and no other papers and exhibits, to-wit:

1. The printed transcript of record filed January 19, 1945.
2. The order of February 22, 1945 incorporating the record of the previous appeal, No. 8320.
3. Hearing on November 16, 1945.
4. The opinion and judgment of 22, January, 1946.
5. The order of February 19, 1946 staying the mandate.
6. This designation of record and service thereon.

Said transcript to be prepared as required by law, and the rules of this Court and the rules of the Supreme Court of the United States to be filed in the Office of the Clerk of the Supreme Court of the United States concurrently with said Petition for Writ of Certiorari.

Charles J. Merriam,
Stanley Hoods,
Counsel for Petitioner.

Service of the above designation accepted and acknowledged this 28th day of February, 1946.

Ephriam Banning,
Counsel for Respondent.

Endorsed: Filed March 2, 1946. Kenneth J. Carrick, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of proceedings had and papers filed as called for by the designation of record, filed March 2, 1946, in:

Cause No. 8753.

Chicago Metallic Manufacturing Company,
Plaintiff-Appellee,

vs.

Edward Katzinger Company,
Defendant-Appellant,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 19th day of March, A. D. 1946.

(Seal) (Signed) Kenneth J. Carrick,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 29, 1946

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted, and the case is assigned for argument immediately following No. 410.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.